



National Grocers Association

April 9, 2003

Country of Origin Labeling Program
Agricultural Marketing Service
USDA STOP 0249, Room 2092-S
1400 Independence Avenue, SW
Washington, DC 20250-0249

RE: Notice of request for public comments; 67 Fed. Reg. 63367, October 11, 2002.
Establishment of Guidelines for the Interim Voluntary Country of Origin Labeling of
Beef, Lamb, Pork, Fish, Perishable Agricultural Commodities, and Peanuts under the
Authority of the Agricultural Marketing Act of 1946.

Dear Sirs:

The National Grocers Association (N.G.A.) takes this opportunity to express its opposition to the United States Department of Agriculture (USDA) Agricultural Marketing Service's (AMS) interim voluntary guidelines for the country of origin labeling of beef, lamb, pork, fish, perishable agricultural commodities, and peanuts under the Agricultural Marketing Act of 1946.

N.G.A. is the national trade association that represents exclusively the interests of independent community-focused grocery retailers and wholesalers. An independent, community-focused retailer is a privately owned or controlled food retail company operating in a variety of formats. Most independent operators are serviced by wholesale distributors, while others may be partially or fully self-distributing. A few are publicly traded, but with controlling shares held by the family and others are employee owned. Independents are the true "entrepreneurs" of the grocery industry and dedicated to their customers, associates, and communities.

N.G.A. appreciates the openness and responsiveness of USDA representatives who tried to explain the country of origin law and guidelines, especially at our February convention in Las Vegas, Nevada with retail and wholesale members of the N.G.A. Government Relations Leadership Council. N.G.A. and its members will continue to provide information at the upcoming USDA listening sessions.

These comments address the adverse effects, unnecessary costs and burdens that would be imposed by USDA's interim voluntary guidelines, especially as USDA has indicated they will serve as the foundation for mandatory regulations that are currently scheduled to take effect on September 30, 2004. N.G.A.'s comments contained herein, that address the costs and burdens imposed by the voluntary

guidelines should not be interpreted as lessening N.G.A.'s strong support for repeal of mandatory country of origin labeling contained in Public Law 107-171 and its replacement with a workable voluntary industry program. This mandate is the result of some domestic agricultural producers seeking a marketing preference over foreign competitors to the detriment of community-focused retailers, wholesalers, producers, and consumers who will ultimately pay the bill for products they have grown accustomed to securing easily and very affordably.

If country of origin labeling were really a food safety issue, its scope would clearly encompass more than the supermarket industry. Why were "food service" products, and their distributors, and their retail outlets excluded? By definition, this means that all hospitals, school lunch rooms, retirement homes, hotels, motels, restaurants, and the military that have eating facilities are totally excluded from this law. This also means that they are able to bring in to their distribution network, any products sourced from any location and it can be served in those establishments without a Country of Origin notification, labeling, or other required information provided to consumers. This illustrates that the guidelines and mandatory country of origin labeling are not a food safety issue, but an attempt to affect some supplier market preference. N.G.A. strongly believes the food industry, neither grocery nor food service, should be subjected to this costly and unnecessary mandate.

The grocery industry has a long, consistent record of working with federal agencies to recall products for any perceived food safety reasons. With today's high technology and instant communications capability, and in coordination and cooperation with federal and state agencies, retailers and wholesalers throughout America are able to rapidly recall products for any reason. This is routinely done and efficiently done when there is a "factual determination" by FDA, USDA or the industry that recall food products is necessary. In fact, N.G.A. and others have supported greater food and drug administrative resources for food import inspections to enhance our nation's food safety and security.

Summary of the Law

Public Law 107-171 through its matrix of complex requirements places onerous and unnecessary burdens on the entire grocery industry by mandating that retailers of a covered commodity inform consumers of the product's country of origin at the point of final sale. Further, any person who supplies those products to a retailer "shall provide information to the retailer indicating the country of origin." The Secretary may require any person who prepares, stores, or distributes a covered commodity for retail sale to maintain "a verifiable recordkeeping audit trail" to verify compliance.

A covered commodity includes muscle cuts of beef, lamb, and pork; ground beef, ground lamb, and ground pork; farm-raised (shellfish and fillets, steaks, nuggets, and any other flesh from farm-raised fish or shellfish) and wild fish (naturally-born or hatchery-raised fish and shellfish harvested in the wild); a perishable agricultural commodity (fresh and frozen fruits and vegetables); and peanuts.

As so often is the case, the devil is in the details and that is certainly the case in the law's definitions of covered products and qualifications for United States Country of Origin. The difference between a product being able to claim a United States country of origin label and a foreign country label is equally complex and demanding for industry compliance. Beef must be exclusively from an animal born raised and slaughtered in the United States, but may include animals born and raised in Alaska or Hawaii and transported for a period not exceed 60 days through Canada to the United States where it must be slaughtered. Lamb and pork products must be from animals that are exclusively born, raised and slaughtered in the United States. Fresh and frozen fruits and vegetables and peanuts must be exclusively produced in the United States

Furthermore, fish product labels must not only contain the country of origin, but also disclose on the label whether it is farm raised or wild. To carry a United States country of origin label, wild fish must be harvested in waters of the United States, a U.S. territory's or State's waters. In addition, it must be processed in the United States, or a U.S. territory or State. Farm raised fish has to be hatched, raised, harvested, and processed in the United States.

Retailers subject to the law are only those in the grocery industry with annual invoice costs for fresh fruits and vegetables in excess of \$230,000. Retailers have to provide country of origin information to consumers at the final point of sale by a label, stamp, mark, placard, or other clear or visible sign on the product or on the package, display, holding unit, or product bin. Food service establishments-such as restaurants, bars, food stands, and similar facilities- that sell the covered commodities are exempt from the law, even though the same U.S. and foreign products that other retailers are required to provide the country of origin information will be sold to consumers.

Penalties also apply to the entire grocery industry. Retailers are subject to fines of up to \$10,000 per violation, after the Secretary finds a willful violation and provides a 30 day notice of violation for the retailer to comply and also a hearing. Other members of the grocery industry are subject penalties up to \$10,000 per violation.

Guidelines Disclose the Unnecessary and Costly Burdens of the Law

The voluntary guidelines issued by USDA clearly illustrate the adverse consequences and costs that will be imposed on retailers and the rest of the grocery industry to provide country of origin labeling. While the retailers have the burden to provide the information to consumers, USDA has correctly made clear that "suppliers are required to provide information to retailers indicating the country of origin of the covered commodity." This requirement, along with the one that requires the retailer to have a verifiable audit trail, or has already caused retailers and their wholesalers to correctly demand future compliance from suppliers up the food chain-processors, shippers, and growers/farmers/fishermen. Contractual and penalty indemnifications will be required as well. These contractual and purchasing paperwork requirements will flow upstream and paperwork with country of origin information in order for every covered product to comply, like shipping documents,

invoices and labels, will flow downstream. With the millions of transactions affected, this creates a paperwork nightmare, which the law and guidelines dump in the retailers' and industry's lap.

N.G.A. recently surveyed grocery retailers and wholesalers on the effects of USDA's voluntary guidelines for country of origin labeling. The survey covered more than 8,000 stores, and the results illustrate the steps retailers and wholesalers will have to take with suppliers to assure compliance with the voluntary guidelines and **the mandatory country of origin labeling requirements scheduled to take effect Sept. 30, 2004.**

Survey respondents were asked to rank a series of steps that could be taken in response to the labeling requirements. **The first step, or the most immediate action** respondents said they would take, would be to require producers and suppliers of covered commodities to label individual products. **Next**, retailers and wholesalers said they would require their producers and suppliers to provide contractual verification of country of origin labeling. This is because USDA is requiring that the industry establish a verifiable audit trail of the country of origin from farmer/producer to retailers.

The third step respondents said they would take was to label or post signs at the point of sale for those products not labeled by producers, such as fruits and vegetables. **The fourth step** would be to no longer carry products that producers do not provide country of origin labeling on the product. **Finally, the fifth and last resort** action that respondents said they would reluctantly consider is to move to case-ready meat. Importantly, many respondents expressed that their customers value the ability to order custom cuts of meat and that it is a valued point of differentiation for independent retailers in the marketplace, making a move to all case-ready meat is an unattractive option, and cause elimination of jobs for meat cutters.

N.G.A. also filed its comments on January 21, 2003 on the USDA request for emergency approval of a new information collection and detailed the burdensome and excessive costs. (The entire N.G.A. January 21, 2003 comments are included here for the record as well.) USDA recordkeeping cost estimates, which N.G.A. strongly believes are grossly underestimated, totaled \$628 million for retailers, \$340 million for food handlers, like wholesalers, and \$1 billion for producers. The vast majority of these costs reoccur annually. As was noted, USDA underestimated the complexity of the recordkeeping system and allocated only two days for a food handler and 5 days for a retailer to set up a recordkeeping system. To maintain and generate the required records for food handlers was one hour per week and one hour per day for retailers.

Furthermore, the USDA estimate of one hour per day for retailers to generate and maintain the required records is wholly inadequate. N.G.A. retailers estimated that it would take substantially more hours to maintain the necessary records of the more than 500 covered items in stock that turn daily in inventory. This is even more true

depending on the degree and yet unspecified amount of product segregation USDA will require.

The guidelines require that the person that prepares, stores, handles or distributes a covered commodity for retail sale must keep the records on the country of origin for a period of at least two years. In addition, retailers must have records at the place of final sale that identify the country of origin of all covered commodities sold in that facility. Comprehensive records may be maintained by the retailer at points of distribution and sale, warehouses, or at central offices. The magnitude of the paperwork involved in generating, maintaining and storing the voluminous amount of records required for two years is a paperwork nightmare for retailers and the industry. Retailers and wholesalers have not had to maintain the records for country of origin information. This would be a new recordkeeping requirement. Seventy-five percent of retailers and wholesalers that responded to N.G.A.'s survey said that they would have to keep manual records to comply.

Retailers and wholesalers confirm that USDA missed the mark on recordkeeping and other burdens of this law. The burdens of this mandatory law, like many others, fall disproportionately on the small businesses that don't have the financial and other resources to comply. Perhaps one independent retailer simply said it best-"We simply can not afford to comply-We will close our independent store of 69 years!"

Labeling Complexity Is Unworkable

To illustrate the complexity of the law and the guidelines for labeling covered commodities, USDA provides the following examples based upon the multiple ways products are grown, and processed in a variety of countries. Pork products would have to be labeled "Country of Origin-United States" or "From Country X hogs, Raised and Slaughtered in the United States." For cattle, it could be "Born in Country X, Raised in Country Y, and Slaughtered in the United States." Mixed or blended products are even more complex. For example, it could be a mixture of product from three different countries and be labeled, "From Country X Cattle Slaughtered in the United States; Product of Country Y; and United States Product." These illustrations confirm why in the words of one retailer, "Packers and suppliers must furnish all data."

The cost and effect of this labeling complexity is readily apparent in meat and seafood departments where products may be blended. The guidelines indicate that the labeling for mixed or blended retail items must be listed by order of prominence. The example cited ground beef which would have to be labeled for each raw material source in descending order of prominence by weight. It is a common practice in various meat departments for retailers to customize products in response to individual consumer orders, but the products are not weighed before blending. This additional requirement is not necessary and burdensome. Similar requests are made in seafood departments whereas USDA describes multiple country of origin sources may be put in a single bag. The results of this complex labeling will require costly revisions to in store operations and computer labeling equipment, and place

additional demands on suppliers to appropriately label product. The end result is that consumers may find less individualized product and services being offered in key retail departments- less product variety and consumer choice.

Product Segregation Plan Is Unspecified

The guidelines provide that when similar covered commodities may be present from more than one country or different production regimes, a verified segregation plan must be in place. Retailers and wholesalers at N.G.A.'s February Government Relations meeting strongly questioned the scope and intent of USDA requirements for a verifiable segregation plan. Nothing in the guidelines specifies how a segregation plan will be interpreted by USDA. For example, bananas from two different countries can be received sequentially. Both bananas are properly labeled with a country of origin. Does that mean they cannot be in the same bin, or next to one another? Does the segregation plan require that they be separated in the back room even though they may be separately and independently boxed? Retailers should be given the maximum flexibility to merchandise products to consumers without being held accountable for unspecified and potentially arbitrary segregation requirements.

State Enforcement Has Potential For Administrative Abuse

The preamble to the voluntary guidelines indicates that surveillance, complaint response, retailer and violation tracking, and public disclosure of information obtained by the agency are all areas that will be addressed in the mandatory program. In N.G.A.'s meeting with USDA representatives, it was indicated that USDA anticipates entering into partnerships with the states for enforcement. Retailers and wholesalers strongly object to the delegation of enforcement powers to state regulatory agencies. It has been retailers' and wholesalers' experience that in these difficult times of state budget shortfalls that state agencies have used enforcement policies as revenue-raising mechanisms. For example, a state which does not have the funds appropriated and budgeted for enforcement of country of origin labeling could well use the monies raised from fines and enforcement to raise revenue not only for enforcement of country of origin but to make up for state agency budget shortfalls. This is especially so when violations can be levied up to \$10,000 per violation.

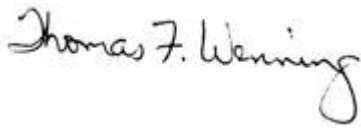
Furthermore, USDA raises the issue of public disclosure of information. There does not appear to be any authorization within the statute for public disclosure of enforcement information.

Conclusion

N.G.A. strongly supports protecting our nation's food supply through thoughtful and prudent means. However, country of origin labeling is not a food safety issue and N.G.A. is opposed to USDA's country of origin guidelines that are clearly unworkable and costly. The adverse effects imposed on independent retailers, wholesalers and other industry small businesses will further erode the number of competitors in the food industry, to the detriment of consumer choice and marketplace diversity.

N.G.A. members request USDA be attentive when the upcoming listening sessions are held to the effects on retailers, wholesalers, and other industry members that will be forced to comply.

Sincerely,

A handwritten signature in dark ink, reading "Thomas F. Wenning". The signature is written in a cursive style with a large, looping "T" and a long, sweeping "W".

Thomas F. Wenning
Senior Vice President and General Counsel